DOCKET NO. 80-1601

ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

CROATAN BOOKS, INC.,
Petitioner

v.

COMMONWEALTH OF VIRGINIA
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

The Commonwealth of Virginia, the Respondent, prays that the Petition for Writ of Certiorari be denied.

STATEMENT OF THE CASE

The Commonwealth essentially agrees with the Petitioner's version of the facts, however greater clarification as to the actual subject matter of this controversy is warranted.

The films in question were titled with such descriptive labels as; "Victorian Love Enema", "Hot Body", "Cum Shots", "Back Door Fever", "Big Black Cigar", "Here Cum the Marines", "Lots of Cum Shots", "Land Lady Lust", "Fantasies", "Finger Licken", "Lesbian Defeat", "Leather Lust" and so on.

These films were designed to be viewed from inside a plywood booth. They were projected onto a small screen only after the customer had placed a quarter into a coin slot. Only a portion of each film could

be viewed for twenty-five cents. The entire film required more than one dollar to be deposited.

The items contained scenes of vaginal intercourse, anal intercourse, ejaculation, fellatio, cunnilingus, and even an enema. Some films involved hetrosexual conduct, some homosexual conduct and some focused on sex among more than two persons.

ARGUMENT

I. THE JURY WAS ABLE TO FAIRLY EVALUATE ALL THE QUESTIONED FILMS EVEN THOUGH THEY WERE VIEWED THREE-AT-A-TIME.

Petitioner's argument that the jury was unable to fairly evaluate the films as a result of the trial court's order that three films be shown simultaneously is presumptuous to say the least. It is a bold assertion that a jury of average adults with any common sense could not glean the predominate theme from films entitled "Victorian Love Enema", "Lesbian Defeat" and "Leather Lust" even when viewing such artistic endeavors three-at-a-time.

The area covered by the three films projected on an area no larger than a small movie theater screen. The trial court took many precautions from an in

camera viewing of a representative film to exhaustive admonishments to the jury regarding its duty to watch each film entirely. The very fact that the jury, after lengthy deliberations, imposed varying fines on twenty of the films and acquitted the Petitioner on twelve others is evidence that the jury felt some of the films to be more obscene than others. Thus the necessary implication is that the films had been viewed entirely and scrutinized accordingly.

II. THE SEARCH AUTHORIZING SEIZURE OF PETITIONER'S PROJECTORS, MIRRORS, COIN BOXES AND BOOTH DOORS WAS PROPER AND DID NOT CONSTITUTE UNLAWFUL PRIOR RESTRAINT.

Virginia Code Section 19.2-53(4) authorizes the seizure of "any object or thing . . . constituting evidence of the commission of a crime". Petitioner was tried and convicted of violating Virginia Code Section 18.2-374(4).

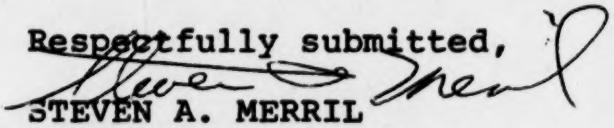
In essence this section makes it a crime for any person to knowingly have in his possession any obscene item with the intent to rent, lend, transport or distribute the same. At trial the Commonwealth must prove not only obscenity but also scienter. The film itself is absolute evidence of obscenity. However, secondary evidence must be shown to prove scienter and, in this case, intent. The coin-operated projectors, the coin boxes and the mirrors are evidence of the defendant's intent to rent the films. The advertising placards and the doors (from which the placards could not be removed, hence their seizure) are evidence of scienter. In other words, the placards are vivid displays of the contents of the films and are necessary to show knowledge of the

films without proof that the petitioner has perused each one.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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